

Supreme Court, U.S.
FILED

05-554 OCT 28 2005

No. _____ OFFICE OF THE CLERK

*In the
Supreme Court of the United States*

DANIEL A. SCHMITT,
Petitioner

v.

CITY OF DETROIT, LORETTA NEAL, MARK VANN, JAMES
FLORKOWSKI, BRYANT JENKINS, AND T. W. GRAPHICS,
Respondents

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Despite the fact that §7(b) of the Privacy Act of 1974, Pub. L. 93-579, 88 Stat. 1896, 1909, 5 USC §552a (2004)(note) expressly imposes an affirmative obligation on any "Federal, State, or local government agency" which requests an individual's social security number ("SSN") to inform the individual whether such disclosure is voluntary or mandatory, by what statutory authority such number is solicited, and the uses that will be made of it, did the Sixth Circuit err in holding, contrary to the Eleventh Circuit (and without citing or distinguishing the Eleventh Circuit's decision), that §7(b) has no application to either State or local government agencies because "agency" is generally defined in 5 U.S.C. §552(f) as encompassing only federal agencies, where such definition, by its terms, applies only to another section of the Privacy Act by virtue of 5 U.S.C. §552a(a)(1)?

LIST OF PARTIES AND RULE 29.6 STATEMENT

The petitioner is Daniel A. Schmitt. The other parties to the proceeding at issue are the City of Detroit, Loretta Neal, Mark Vann, James Florkowski, Bryant Jenkins, and T. W. Graphics.

Except for the City of Detroit, a Michigan municipal corporation, and T. W. Graphics, there are no other corporations, limited liability companies, partnerships, limited partnerships, or juristic entities that are parties to this case. No publicly held corporation or entity is involved herein, nor is any party 10% or more owned by a publicly traded entity. All natural persons party to this case are listed in the above paragraph and in the caption.

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Issue: Where §7(b) of the Privacy Act of 1974,
Pub. L. 93-579, 88 Stat. 1896, 1909, 5 USC

§552a (2004)(note) expressly imposes an affirmative obligation on any "Federal, <u>State</u> , or <u>local</u> government agency" which requests an individual's social security number ("SSN") to inform the individual whether such disclosure is voluntary or mandatory, by what statutory authority such number is solicited, and the uses that will be made of it, the Sixth Circuit erred in holding, contrary to the Eleventh Circuit (and without citing or distinguishing the Eleventh Circuit's decision), that §7(b) has no application to either State or local government agencies because "agency" is generally defined in 5 U.S.C. §552(f) as encompassing only federal agencies, where such definition, by its terms, applies only to another section of the Privacy Act by virtue of 5 U.S.C. §552a(a)(1)	9
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**CITATIONS TO OPINIONS AND ORDERS ENTERED
BELOW PER SUPREME COURT RULE 14.1(d)**

The Sixth Circuit's decision is reported: *Schmitt v. City of Detroit*, 395 F.3d 327 (6th Cir., 2005) and reproduced in Petitioner's Appendix A ("Pet. Apx. A"), pp. 1a-9a.

The Sixth Circuit's order denying rehearing entered August 10, 2005 is not reported, and is reproduced at Pet. Apx. 10a (Appendix B).

The United States District Court for the Eastern District of Michigan's decision is reported: *Schmitt v City of Detroit*, 267 F Supp 2d 718 (E.D. Mich., 2003), and is reproduced at Pet. Apx. pp. 11a-26a (Appendix C).

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully requests that this Court issue a writ of certiorari to review the judgment entered by the United States Court of Appeals for the Sixth Circuit on January 14, 2005 (Pet. Apx. 1a, Appendix A) in this case, as to which the Sixth Circuit has denied rehearing and rehearing *en banc* by order of August 10, 2004 (Pet. Apx. 10a, Appendix B).

**BASIS OF JURISDICTION OF THE SUPREME COURT
PER SUPREME COURT RULE 14.1(e)**

The Sixth Circuit's decision was issued on January 14, 2005; petitioner timely moved for rehearing and rehearing *en banc* on January __, 2005. The Sixth Circuit then denied rehearing and rehearing *en banc* on August 10, 2005, and issued its mandate on August 25, 2005. The jurisdiction of this Court is based on 28 U.S.C. §1254(1). This petition for certiorari is timely in accordance with Supreme Court Rule 13.1 and 13.3.

**TEXT OF STATUTORY PROVISIONS INVOLVED PER
SUPREME COURT RULE 14.1(f)**

This case involves the construction and application of §7(b) of the Privacy Act of 1974, Pub. L. 93-579, 88 Stat. 1896, 1909, 5 U.S.C. §552a (2004)(note), in connection with the definition of "agency" in 5 U.S.C. §552(f), as well as 42 U.S.C. §§1983 and 1988. The text of these statutes is as follows:

Section 7(b) of the Privacy Act, Pub.L. 93-579, 88 Stat.1909, 5 U.S.C. § 552a (2004) (note)¹, provides as follows:

Any Federal, State, or local government agency which requests an individual to disclose his social security account number shall inform that individual whether that disclosure is mandatory or voluntary, by what statutory or other authority such number is solicited, and what uses will be made of it.

5 U.S.C. § 552a(a)(1), which is part of the Privacy Act, provides:

a) Definitions.—For purposes of this section—
(1) the term "agency" means agency as defined in section 552(e) of this title;

5 U.S.C. § 552(f) provides:

(f) For purposes of this section, the term--
(1) "agency" as defined in section 551(1) of this title includes any executive department, military department, Government corporation, Government

¹ Section 7(b) is not part of the United States Code but it is part of the Statutes at Large, 88 Stat. 1909, and therefore fully effective per 1 U.S.C. §112 (declaring that the Statutes at Large "shall be legal evidence of laws.")

controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency;

28 U.S.C. §1331 provides:

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

42 U.S.C. §1983 provides:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

42 U.S.C. §1988 provides:

(a) Applicability of statutory and common law

The jurisdiction in civil and criminal matters